



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/933,576	08/21/2001	Mark Hugo Martens		5667

7590 01/16/2003

Mark H. Martens  
3258 Peace Valley Lane  
Falls Church, VA 22044

EXAMINER

MARKS, CHRISTINA M

ART UNIT PAPER NUMBER

3713

DATE MAILED: 01/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# **Interview Summary**

Application No.

09/933,576

Applicant(s)

MARTENS, MARK HUGO

Examiner

C. Marks

Art Unit

3713

All participants (applicant, applicant's representative, PTO personnel):

(1) C. Marks.

(3) \_\_\_\_\_.

(2) Hugo, Mark.

(4) \_\_\_\_\_.

Date of Interview: 14 January 2003.

Type: a) ☒ Telephonic b) ☐ Video Conference  
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.  
If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: \_\_\_\_\_.

Identification of prior art discussed: \_\_\_\_\_.

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

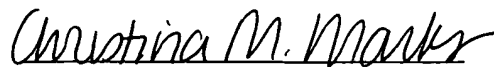
i) ☒ It is not necessary for applicant to provide a separate record of the substance of the interview (if box is checked).

Unless the paragraph above has been checked, THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.



**MICHAEL O'NEILL**  
**PRIMARY EXAMINER**

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

  
Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

#### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case unless both applicant and examiner agree that the examiner will record same. Where the examiner agrees to record the substance of the interview, or when it is adequately recorded on the Form or in an attachment to the Form, the examiner should check the appropriate box at the bottom of the Form which informs the applicant that the submission of a separate record of the substance of the interview as a supplement to the Form is not required.

It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

#### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments:

Applicant was informed that drawings were required in response to the first office action. Further, the claims must be amended into proper form. The difference between a 102 rejection and a 103 rejection were discussed as well as the fact that secondary considerations can apply to a 103 (Examiner pointed out *Graham v. John Deere* - Item No. 4). Examiner informed applicant that a 102 is a statutory bar and secondary considerations can not be applied. Applicant informed Examiner that he had discovered other art in a search made after the first action. Examiner advised applicant that it is required that if this art is relevant to his case that it is his duty to disclose the information to the office. Applicant and Examiner went over the basic format for a patent Application and discussed changes that need to be made in order for the Applicant's application to be in proper form. Changes included adding drawings, adding a brief description of the drawings to the specification, as well as identifying the invention by the drawing number and reference part as applicable. Applicant was also advised to note the claim language of the prior art associated with the case for proper form. The Examiner and the Applicant then discussed what an amendment is and what is allowed in an amendment. Examiner told Applicant that no new information may be added and the Applicant may argue with the Examiner's findings or amend the claim language as long as no new matter is added. Applicant was advised to consult the MPEP for information about amendments, as well as the Independent Inventor web page. Examiner agreed to send the pro se paragraphs relating to amendments along with this Interview summary. The actual merits of the case in relation to the prior art were not discussed and the Applicant was advised that a formal amendment need be submitted for further prosecution.

Art Unit: 3713

### Interview Summary

As stated in the first office action, an examination of this application reveals that applicant is unfamiliar with patent prosecuting procedure. Applicant is reminded that the revision of the specification and claims to present the application in proper form is required. While an application can be amended to make it clearly understandable, no subject matter can be added that was not disclosed in the application as originally filed.

If Applicant wishes to continue to prosecute this patent application, applicant must reply in writing. It would be of great assistance to the Office if all incoming papers pertaining to a filed application carried the following items:

1. Serial number (checked for accuracy).
2. Group art unit number (copied from filing receipt or most recent Office Action).
3. Filing date.
4. Name of the examiner who prepared the most recent Office action.
5. Title of invention.
6. Name of Applicants.

Applicant's reply should identify the Office Action the amendment is in response to by its mailing date or paper no. and must specifically request further examination and reconsideration. Applicant or Applicant's registered representative must sign the reply.

In a reply to an Office Action, Applicant can amend the specification, drawings and claims to overcome objections and rejections as well as argue against any position taken by the Examiner. Applicant's arguments and other pertinent comments should appear under the heading "REMARKS". In Applicant's remarks, applicant must point out each error, if any, applicant believes the Examiner has made in the current Office Action and/or how any amendments Applicant has made to the specification, drawings and claims overcome the Examiner's

Art Unit: 3713

objections and rejections. Applicant must respond to each and every ground of rejection and objection raised in the current Office Action.

To overcome the objection and rejection for lack of an enabling disclosure, Applicant can argue that the holding of non-enabling by the Examiner is in error. To be persuasive, however, such an argument must point out where, in the specification as originally filed, the specification provides the necessary detailed disclosure for supporting the claimed invention. Alternatively, the Applicant could rebut the Examiner's holding of non-enabling by submitting evidence that the disclosure as it now stands is sufficient to enable an artisan, of ordinary skill, to make and use the invention. Such evidence should take the form of patents or literature published before the filing date of Applicant's application. Alternatively, the evidence could take the form of one or more affidavits by skilled in the art, stating facts, and on the basis of their knowledge and skill, establish that, on or before the filing date of Applicant's application, one of ordinary skill in the art could make and use the claimed invention from reading the specification without undue experimentation.

In a response in which Applicant intends to overcome a prior art rejection, Applicant may 1) submit amendments to the claims along with arguments and remarks or 2) rely solely on arguments. A general statement that the claims are patentable will not be sufficient to overcome a rejection. The Patent Rules require Applicant to specifically point out the claim language that unobviously distinguishes the claimed invention over the prior art cited in the Examiner's rejection.

Applicant can amend the specification and drawings by sending the Office a signed letter directing the Office to make the specified alterations. Applicant must specify the exact words to

Art Unit: 3713

be stricken or added and the precise point in the specification (page and line number) where the changes are to be made by the amend. Under no circumstances may an amendment introduce new subject matter to the specification, drawings or claims. New claims may be submitted but must be numbered sequentially with the last numbered claim currently pending. As per 37 C.F.R. § 1.121(a), Applicants may amend claims by specifically identifying the exact word or words to be entered or stricken. There are some restrictions, see 37 C.F.R. § 1.121<sup>©</sup> below:

A particular claim may be amended in the manner indicated in paragraph (a) of 37 C.F.R.

§ 1.121 to the extent of corrections in spelling, punctuation, and typographical errors.

Additional amendments in this manner will be admitted provided the changes are limited to: (1) deletions and/or (2) the addition of no more than five words in any one claim.

Any amendment submitted with instructions to amend particular claims but failing to conform to the provisions of paragraphs (b) and <sup>©</sup> of 37 C.F.R. § 1.121 may be considered nonresponsive and treated accordingly.

Lengthy amendments to the claims should be made in accordance with 37 C.F.R.

§ 1.121(b) which states:

Except as otherwise provided herein, a particular claim may be amended only by directions to cancel or by rewriting such claim with underlining below the word or words added and brackets around the word or words deleted. The rewriting of a claim in this form will be construed as directing the cancellation of the original claim; however, the original claim number followed by the parenthetical word "amended" must be used for the rewritten claim. If a previously rewritten claim is rewritten, underlining and bracketing will be applied in reference to the previously rewritten claim with the

Art Unit: 3713

parenthetical expression "twice amended", "three times amended", *etc.*, following the original claim number.

If Applicants submit a rewritten claim, it must be identified by the original claim number followed by the parenthetical word "amended", and words inserted should be underlined and words to be deleted should be in brackets [like this]. Additionally the applicant is required to submit a copy of the rewritten claim without any editing marks.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Marks whose telephone number is (703)-305-7497. The examiner can normally be reached on Monday - Friday (7:30AM - 4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, V. Martin-Wallace can be reached on (703)-308-1148. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9302 for regular communications and (703)-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1148.

*cmm*  
cmm

January 14, 2003